

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.3750 of 2014

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Dated 13.03.2015

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Between:

JRS.Sofa World Pvt. Ltd., Hyderabad

rep. by its MD Mr.M.G.Jeelani

...Petitioner

and

Smt.Divya Reddy. B and another

...Respondent

Counsel for the Petitioner: Mr.VLNGK Murthy

**Counsel for the respondents: Mrs.G.Neeraja Reddy
for Mr.L.Prabhakar Reddy**

The Court made the following:

Order:

This Civil Revision Petition arises out of Order, dated 26-09-2014, in IA.No.1576 of 2013 in OS.No.564 of 2013, on the file of the Court of the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

The respondents filed the above-mentioned suit for eviction of the petitioner- Company from the suit schedule premises. Pending disposal of the suit, they have filed the aforesaid IA under Order XV-A read with Section 151 of the Code of Civil Procedure, 1908 (CPC), to direct the petitioner to pay the outstanding rental amount of Rs.42,39,458/- and also to continue to pay the regular monthly rents as per the agreement entered into between them in respect of the suit schedule premises till the petitioner vacates the same.

The petitioner has filed a counter-affidavit wherein while not disputing the quantum of rent, it has, however, pleaded that due to the failure of the respondents to insure the suit schedule premises, a fire accident, which took place in the said premises, has resulted in huge loss to it and that therefore, a counter claim has been filed by it for a sum of Rs.1,15,09,322/- with interest @ 18% p.a. The petitioner has further pleaded that both the original landlords of the suit schedule premises as well as the respondents, who are the subsequent purchasers of the same, have themselves declared rent holidays for a period of three months in three consecutive years from 2010 to 2012 and that on calculation of the rents for the period of rent holidays, a sum of Rs.27 lakhs is to be deducted from the arrears.

Upon hearing the learned Counsel for both the parties, the lower Court, by the order under revision, has allowed the application of the respondents by directing the petitioner to deposit a sum of Rs.42,39,458/- towards the arrears of rents till March, 2013 and Rs.3,60,000/- per month towards the arrears of rents from April, 2013, to September, 2014, within a

period of one month therefrom. The petitioner was further directed to deposit the future rents, from October, 2014, onwards, @ Rs.3,60,000/- per month on the 5th of every succeeding month as agreed between the parties under the registered lease deed, dated 30-10-2008. The lower Court has further directed that in case of the petitioner's failure to deposit the said amounts, the defence raised by it shall be struck off and necessary orders for its eviction from the suit schedule premises would follow.

At the hearing, Mr.VLNGK.Murthy, learned Counsel for the petitioner, has advanced the following submissions:

“1. That the lower Court has committed a serious error in not allowing the plea of rent holidays only on the ground that the registered lease deed, dated 30-10-2008, does not contain any recital with regard to the same;

2. That the petitioner has a refundable advance of Rs.15 lakhs, which ought to have been adjusted by the lower Court; and

3. That the lower Court has failed to consider the plea of the petitioner with respect to the counter-claim, which is based on a term of the contract, and that on a *prima facie* consideration of the same, it is quite evident that, while the petitioner-tenant will not be liable to pay any amount to the respondents-landlords, the respondents, on the contrary, will be liable to pay to the petitioner a sum of around Rs.80 to 90 lakhs even after adjusting the arrears of rents.”

The learned Counsel for the respondents have sought to justify the order of the lower Court.

As regards the first submission of the learned Counsel for the petitioner *viz.*, rent holiday, the registered lease deed, dated 30-10-2008, does not contain any recital with regard thereto. However, after execution of the lease deed, the original owners of the suit schedule premises *vide* their letter, dated

14-03-2010, have agreed to give the petitioner the rent holiday for three months in the year 2010. On 16-12-2010, a similar letter was issued by them declaring rent holiday for three months in the year 2011. After purchase of the suit schedule premises by the respondents, they have also written a similar letter on 10-02-2012 declaring rent holiday for three months in the year 2012.

In my *prima facie* opinion, the respondents cannot retract from their action of declaring rent holidays. The lower Court has committed an error in not considering the above referred letters, the authenticity of which is not disputed by the petitioner. Accordingly, I hold that the petitioner is not liable to pay the sum of Rs.27 lakhs for the period of rent holidays from 2010 to 2012.

With respect to the refundable advance of Rs.15 lakhs, I find no merit in the submission of the learned Counsel for the petitioner. Unless and otherwise agreed by the parties, the landlord is entitled to keep the advance paid by the tenant till the premises is vacated by the tenant in order to enable himself to adjust the arrears, if any payable by the tenant, and also to meet the expenses that may be required to be incurred for damage of the demised premises. As the petitioner has refused to vacate the suit schedule premises, the question of adjusting the advance towards the arrears of rent, at this stage, does not arise. Hence, the petitioner cannot be permitted to plead such adjustment pending the suit.

With regard to the counter-claim, the plea taken by the petitioner, in my opinion, is far-fetched. The claim of the petitioner that it is entitled to recover damages from the respondents for their alleged non-compliance with the agreement condition that they shall insure the suit schedule premises is pending in the form of counter claim. Thus, the

right of the petitioner to recover any amount towards the alleged damages is inchoate as of now as the alleged liability of the respondents has not yet been crystallized. At any rate, the claim made by the petitioner does not form part of the rent and therefore, the same does not fall within the scope of Order XV-A of the CPC. On this analysis, I find the plea of the petitioner that the arrears of rents have to be adjusted against the counter-claim made by it, is without any legal basis.

In the light of the discussion undertaken above, this Civil Revision Petition is partly allowed by holding that the petitioner was not liable to deposit the sum of Rs.27 lakhs towards the rent holidays from out of the arrears payable by it. The order of the lower Court in all other respects is confirmed.

As a sequel to disposal of the Civil Revision Petition, CRPMP.No.5125 of 2014, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 13th March, 2015

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